

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 4

ENFORCEMENT DIVISION

CHAPTER 21

THE ADMINISTRATION AND ENFORCEMENT OF THE  
PAYMENT OF WAGES AND OTHER COMPENSATION LAW

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**Historical Note:** Chapter 21 of title 12 is based substantially upon "Regulation XXXVIII, Relating to the Administration and Enforcement of the Payment of Wages and Other Compensation Law" of the Department of Labor and Industrial Relations. [Eff. 12/31/71; am 8/26/73; R 7/30/81]

**§12-21-1 Definitions.** As used in this chapter:

"Department" means the department of labor and industrial relations.

"Director" shall be as defined in section 388-1, Hawaii Revised Statutes.

"Employ" shall be as defined in section 388-1, Hawaii Revised Statutes.

"Employee" shall be as defined in section 388-1, Hawaii Revised Statutes.

"Employer" shall be as defined in section 388-1, Hawaii Revised Statutes.

"Wages" shall be as defined in section 388-1, Hawaii Revised Statutes. [Eff: 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-13)

**§12-21-2 Monthly payday elections.** (a) A petition for

once-a-month pay election, or for an election to terminate once-a-month pay, shall be made by:

- (1) An official representative of a recognized collective bargaining unit with the concurrence of at least twenty-five per cent of the total number of eligible voters in the collective bargaining unit as evidenced by their signatures thereon; or
- (2) Any employee of an employer not in a collective bargaining unit with the concurrence of at least twenty-five per cent of the eligible non-bargaining unit voters in the employ of that employer as evidenced by their signatures thereon.

(b) The petition shall be filed on a form furnished by the enforcement division of the department at 888 Mililani Street, Room 401, Honolulu, or its district offices on Hawaii, Maui, and Kauai.

(c) No formal secret ballot election need be conducted when a petition is received from an employer's sole employee.

(d) An employee must be on the employer's payroll on the date of election to be eligible to vote.

- (1) In an election requested by an official representative of a collective bargaining unit, only members of that collective bargaining unit who are eligible voters shall be entitled to vote.
- (2) In an election requested by a non-bargaining unit employee, only non-bargaining unit employees of the employer who are eligible voters shall be entitled to vote.
- (3) If the eligibility of a particular employee to vote is challenged, the ballot of that employee shall be received by the departmental representative under protest and placed in an individual envelope provided for that purpose. If challenged ballots would determine the election, the department shall investigate the challenge and the department's findings shall be binding on all parties.

(e) A certification of election issued by the department shall be valid until a new election and certification of results of that election supersede the previous certification.

(f) A new petition for election shall not be accepted until two years have elapsed, from the date of the previous election.

[Eff. 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-2)

**§12-21-3 Exception to the semimonthly payday.** (a) The director may grant an exception to the semimonthly payday requirement when it is shown that:

- (1) The employer will suffer undue hardship if the application is-denied; or
  - (2) The employer will give a semimonthly advance equivalent to approximately one-half of the monthly "take home" pay to each employee.
- (b) Where the director grants an employer's request to establish regular paydays less frequently than semimonthly on the grounds of undue hardship under subsection (a)(1), the exception shall expire two years from the date of grant. A request for renewal of exception shall be submitted to the director at least thirty days prior to expiration of the exception then in force. (Eff. 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-2)

**§12-21-4 Withholding of wages.** Adjustment in wages for advances or correction of computation errors from previous payrolls shall not be considered as deductions under section 388-6, Hawaii Revised Statutes. [Eff. 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-6)

**§12-21-5 Notification.** (a) Every employer shall, at the time of each payment of wages, furnish each employee an itemized statement in writing showing:

- (1) The name of the employer;
- (2) The name of the employee;
- (3) The inclusive dates of the period for which the employee is paid;
- (4) Total gross compensation;
- (5) The amount and purpose of each deduction, except that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (6) Total net pay; and
- (7) Date of payment.

(b) The pay statement shall be furnished in a form that the employee may retain as a personal record. It may be in the form of a section detachable from the check or a separate form. [Eff. 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-7)

**§12-21-6 Individuals employed in bona fide executive, administrative, professional, or outside salesman capacity.** (a) An individual employed in a bona fide executive capacity is an employee whose:

- (1) Compensation is \$1,500 or more per month (exclusive of board, lodging, or other facilities); and
- (2) Primary duty consists of the management of the enterprise or recognized department thereof, which includes the customary and regular direction of the work of two or more

employees.

(b) An individual employed in a bona fide administrative capacity is an employee whose:

- (1) Compensation is \$1,500 or more per month (exclusive of board, lodging, or other facilities); and
- (2) Primary duty consists of the performance of office or non-manual field work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of judgment or discretion.

(c) An individual employed in a bona fide professional capacity is an employee whose:

- (1) Compensation is \$1,500 or more per month (exclusive of board, lodging, or other facilities); and
- (2) Primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning or requiring invention, imagination, or talent in a recognized field of artistic endeavor.

(d) An individual employed in an outside salesman capacity is an employee:

- (1) Whose compensation is \$1,500 or more per month (exclusive of board, lodging, or other facilities);
- (2) Who is employed for the purpose of making sales or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer;
- (3) Who is customarily and regularly engaged away from the employer's place or places of business; and
- (4) Whose hours of work of a nature other than that described above do not exceed forty per cent of the hours worked in the workweek by other employees. [Eff. 9/27/87] (Auth: HRS §388-13) (Imp: HRS §388-11)

**§12-21-7 Accrued vacation;** severance pay. A claim for accrued vacation or severance pay shall be considered filed within one year from the date the vacation or severance pay is due and payable if filed with the director or authorized departmental representative within one year from the date of termination from employment with the employer. [Eff. 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-11)

**§12-21-8 Hearing.** In order to determine the validity of the wage claim and to bring about possible settlement, an informal hearing may be conducted by the director or authorized departmental representative. If a hearing is to be conducted, written notice of hearing specifying the time and place thereof and the claim in

dispute shall be given or mailed to the parties five or more days before the hearing. Oral or written evidence of any nature whether or not conforming to the rules of evidence may be accepted. If either party fails to appear, the decision as to the validity of the claim shall be made on the basis of available information. [Eff. 7/30/81] (Auth: HRS §388-13) (Imp: HRS §388-9)

**§12-21-9 Wage claim fund.** The director shall establish a wage claim fund for the purpose of depositing and disbursing monies collected for employees as wage claims or back pay. [Eff. 7/30/81] (Auth: HRS §388-13) (Imp. HRS §388-11)